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ACTION L-01

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|------|---------|--------|---------|---------|---------|---------|---------|
| INFO | LOG-00  | AF-01  | AID-01  | ARA-01  | CIAE-00 | OASY-00 | DODE-00 |
|      | EAP-01  | EB-01  | EUR-01  | H-01    | TEDE-00 | INR-00  | IO-16   |
|      | ADS-00  | NEA-01 | NSAE-00 | NSCE-00 | OIC-02  | PA-01   | PM-00   |
|      | PRS-01  | P-01   | SP-00   | SR-00   | SS-00   | STR-01  | TRSE-00 |
|      | USIE-00 | SA-01  | PMB-00  | PRME-01 | DRL-09  | G-00    | /042W   |

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FM USMISSION USUN NEW YORK  
TO SECSTATE WASHDC IMMEDIATE 8253  
INFO AMEMBASSY KAMPALA IMMEDIATE  
AMEMBASSY PARIS IMMEDIATE  
AMEMBASSY MOSCOW IMMEDIATE  
AMEMBASSY LONDON IMMEDIATE  
AMEMBASSY BEIJING IMMEDIATE

C O N F I D E N T I A L SECTION 01 OF 02 USUN NEW YORK 003281

KAMPALA PLS PASS TO ASST SECRETARY SHATTACK

E.O. 12356: DECL: OADR  
TAGS: RW, UK US, CH, RS, FR  
SUBJECT: RWANDA WAR CRIMES

REF: USUN 03237

1. CONFIDENTIAL - ENTIRE TEXT

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PAGE 02 USUN N 03281 01 OF 02 100013Z  
2. SUMMARY: AT A MEETING OF THE P-5 MISSION LEGAL  
ADVISERS AT THE USUN ON AUGUST 9, ALL EXCEPT CHINA  
AGREED THAT AN INSTITUTION OF INTERNATIONAL CHARACTER  
SHOULD BE CREATED TO DEAL WITH GENOCIDE AND OTHER  
CRIMES COMMITTED IN RWANDA. ON THE ISSUE OF AMENDING  
THE STATUTE OF THE YUGOSLAV TRIBUNAL CREATING A NEW  
RWANDAN TRIBUNAL, ORDZHONIKIDZE (RUSSIA) PUSHED FOR A  
RWANDAN TRIBUNAL THAT IS LEGALLY SEPARATE FROM THE  
YUGOSLAV TRIBUNAL AT BOTH THE TRIAL AND APPELLATE  
LEVELS. WOOD (UK) AND LEGAL (FRANCE) SAID THEIR  
GOVERNMENTS FAVORED USING THE YUGOSLAV TRIBUNAL'S

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FACILITIES AND SOME PERSONNEL IN CONJUNCTION WITH THE AD HOC RWANDAN TRIBUNAL. LEGAL EXPRESSED A PREFERENCE FOR THE RWANDAN TRIBUNAL TO HAVE A LEGALLY DISTINCT STATUS FROM THE YUGOSLAV BODY. ZHANG (CHINA) SAID HIS GOVERNMENT HAS NOT DECIDED HOW TO HANDLE THE RWANDAN TRIBUNAL ISSUE. THERE WAS NO AGREEMENT AMONG THE P-5 STATES ON HOW TO DETAIN SUSPECTED RWANDANS AT THIS STAGE WITHIN ACCEPTED INTERNATIONAL LEGAL NORMS. END SUMMARY.

#### CREATING A SEPARATE TRIBUNAL

3. AT A MEETING OF THE P-5 MISSION LEGAL ADVISERS AT USUN AM AUGUST 9, TO FOLLOW UP ON AUGUST 4 MTG (REFTEL) ALL EXCEPT CHINA AGREED THAT AN INSTITUTION OF INTERNATIONAL CHARACTER SHOULD BE CREATED TO DEAL WITH CRIMES COMMITTED IN RWANDA.

4. ON THE ISSUE OF AMENDING THE STATUTE OF THE YUGOSLAV TRIBUNAL OR CREATING NEW RWANDA TRIBUNAL,  
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ORDZHONIKIDZE (RUSSIA) STEADFASTLY SUPPORTED A RWANDA TRIBUNAL THAT IS LEGALLY SEPARATE FROM THE YUGOSLAV TRIBUNAL AT BOTH THE TRIAL AND APPELLATE LEVELS. ORDZHONIKIDZE SAID THE YUGOSLAV TRIBUNAL AS AN AD HOC BODY SHOULD DEAL ONLY WITH YUGOSLAV MATTERS. UNTIL A PERMANENT INTERNATIONAL CRIMINAL COURT IS ESTABLISHED, THE UN SHOULD AUTHORIZE A SEPARATE AD HOC TRIBUNAL TO DEAL WITH THE RWANDAN MATTER. HE APPROVED OF SHARING FACILITIES AND PERSONNEL FROM THE YUGOSLAV TRIBUNAL WITH A NEW RWANDAN TRIBUNAL.

5. ORDZHONIKIDZE SAID HE PREFERRED A "NUREMBURG-TYPE" APPROACH TO TRYING SUSPECTED RWANDAN CRIMINALS. HIGHER-LEVEL OFFENDERS WOULD BE TRIED BY THE INTERNATIONAL TRIBUNAL, WHILE THE LOWER-LEVEL OFFENDERS WOULD FACE RWANDAN COURTS. HE ADVOCATED THIS APPROACH SO THE UN COULD SHOW CLEARLY ITS INTENTION TO PROSECUTE WORLDWIDE THOSE WHO COMMIT CRIMES OF GENOCIDE AND OTHER GRAVE VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW.

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7. WOOD (UK) SAID HIS GOVERNMENT FAVORED USING THE YUGOSLAV TRIBUNAL'S MECHANISMS IN CONJUNCTION WITH THE RWANDAN TRIBUNAL. HIS TWO KEY CONCERNS WERE KEEPING THE EFFORT AS INEXPENSIVE AS POSSIBLE AND USING THE RWANDAN TRIBUNAL TO TRY ONLY THE HIGHEST LEVEL

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OFFENDERS. WOOD ARGUED THAT THE RWANDAN COURTS, WITH APPROPRIATE INTERNATIONAL ASSISTANCE, COULD BE RESPONSIBLE FOR TRYING LOWER LEVEL ACCUSED WAR CRIMINALS.

8. ZHANG (CHINA) SAID HIS GOVERNMENT WANTS TO EXHAUST OTHER REMEDIES BEFORE DECIDING ON A TRIBUNAL. THE CHINESE WANT INTER-ALIA TO EXAMINE THE OPINIONS OF RWANDA AND OTHER AFRICAN STATES ON THE ACCEPTABILITY OF CREATING AN INTERNATIONAL TRIBUNAL VERSUS THE UTILITY OF USING RWANDA'S DOMESTIC COURTS. IF THE DOMESTIC COURTS ARE CHOSEN, THE CHINESE PREFER TO LEND INTERNATIONAL LEGAL ASSISTANCE TO RWANDA TO HELP MAINTAIN THE COURTS' IMPARTIALITY. ZHANG FEELS IT IS INAPPROPRIATE TO INVOKE CHAPTER SEVEN OF THE UN CHARTER TO SET UP A NEW TRIBUNAL UNTIL THESE OPTIONS ARE EXPLORED. HE ALSO EXPRESSED NERVOUSNESS THAT ESTABLISHING SUCH TRIBUNALS COULD BECOME TOO EASY.

9. LEGAL (FRANCE) SHARED RUSSIA'S VIEW THAT THE AD HOC RWANDAN TRIBUNAL COULD SHARE THE FACILITIES AND SOME OF THE PERSONNEL OF THE YUGOSLAV TRIBUNAL, BUT PREFERABLY SHOULD MAINTAIN A LEGALLY DISTINCT STATUS. HE VIEWS

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C O N F I D E N T I A L SECTION 02 OF 02 USUN NEW YORK 003281

KAMPALA PLS PASS TO ASST SECRETARY SHATTACK

E.O. 12356: DECL: OADR  
TAGS: RW, UK US, CH, RS, FR  
SUBJECT: RWANDA WAR CRIMES

CREATING AN INTERNATIONAL TRIBUNAL AS THE ONLY WAY TO  
AVOID GIVING THE IMPRESSION THAT TRIALS WERE CONDUCTED  
BY THE VICTOR TO SEEK REVENGE. HE AGREED WITH THE US  
POSITION THAT POLITICAL RECONCILIATION IN RWANDA IS  
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MORE LIKELY TO BE ASSISTED IF AN IMPARTIAL  
INTERNATIONAL TRIBUNAL CONDUCTED THE TRIALS.

DETAINING SUSPECTED WAR CRIMINALS

10. THERE WAS NO AGREEMENT AMONG THE P-5 STATES ON  
DETAILS OF DETAINING SUSPECTED RWANDAN WAR CRIMINALS.  
ORDZHONIKIZDE AGREED IN PRINCIPLE ON THE NEED TO ARREST  
SUSPECTED WAR CRIMINALS QUICKLY, BUT DID NOT HAVE AN  
OPINION ON WHO WOULD ARREST THE SUSPECTS, WHO WOULD  
DETAIN THEM, AND HOW THE ARRESTS WOULD BE AUTHORIZED.

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[REDACTED] ZHANG 'S CONCERN FOCUSED ON THE  
LARGE NUMBER OF POTENTIAL DETAINEES, WHO WOULD DECIDE  
WHICH DETAINEES TO TRY IN WHICH COURT, AND WHETHER THE  
DETAINEES WOULD BE BROUGHT TO THE HAGUE.

11. ACCORDING TO LEGAL, HAVING CHAPTER SEVEN AUTHORITY  
AND ALLOWING THE INTERNATIONAL COMMITTEE OF THE RED  
CROSS TO VISIT DETAINEES DID NOT SOLVE ALL THE  
PROBLEMS. HE SAID QUESTIONS REMAIN REGARDING WHO WOULD  
MAKE THE ARRESTS, WHAT INFORMATION THE DECISION TO  
ARREST WOULD BE BASED UPON, WHO IS RESPONSIBLE FOR

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HOLDING THE DETAINEES AND UNDER WHAT AUTHORITY THESE  
DECISIONS ARE MADE.

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